

## United States District Court

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DISTRICT OF KANSAS

CLERK U.S. DIST. COURT  
WEST DIST. OF MO  
KANSAS CITY, MO

JAMES CONLON DAY,

Plaintiff,

v.

Case No. 21-CV-2146-KHV

F. COULTER DEVRIES, B. JANEEN  
DEVRIES, DANIEL JONES AND  
DEVRIES AND ASSOCIATES, P.C.,

Defendants.

## AMENDED JUDGMENT IN A CIVIL CASE

- ☐ Jury Verdict. This action came before the Court for a jury trial. The issues have been tried and the jury has rendered its verdict.
- ☒ Decision by the Court. This action came before the Court. The issues have been considered and a decision has been rendered.

**The Judgment (doc. 38) filed on April 14, 2022 is amended as follows:**

**IT IS ORDERED AND ADJUDGED** that pursuant to the Order (Doc. #49) filed July 21, 2023, the fraud on the court claim by plaintiff James Conlon Day against defendants F. Coulter DeVries, B. Janeen Devries, Daniel Jones and DeVries and Associates, P.C. is **DISMISSED WITHOUT PREJUDICE** and that plaintiff's breach of fiduciary duty claim against defendants F. Coulter DeVries, B. Janeen DeVries, Daniel Jones and DeVries and Associates, P.C. is **DISMISSED WITH PREJUDICE**.

SKYLER O'HARA  
CLERK OF THE COURTDated: July 21, 2023s/ Audra Harper

Deputy Clerk



College of Arts and Sciences  
Economics Department

May 11, 2014

## BACKGROUND

In late 1997, Mr. Day's employee, Eric Johnson, signed an employment agreement with Mr. Day. An enforcement clause in the employment agreement provided for injunctive relief as well as liquidated damages and attorney fees. In September, 1998, Mr. Day discovered that Johnson had violated the employment contract and was starting his own yellow page advertising company, Sunflower Marketing Group. Day learned that Johnson was going to take several of Day's customers. Due to the fact that the non-compete was not being enforced with Mr. Johnson, Day Advertising was faced with over \$1,000,000 in lost revenue. At the time, Day Advertising owed approximately \$1,500,000 to various banks. After the loss of the customer base, Day Advertising would not have been able to service the bank. As a result, Day Advertising ceased placing additional advertising for clients. Mr. Day used the receivable income to pay creditors off and was forced to go out of business.

Mr. Benson did not relate to me that the destruction of Day Advertising was the result of the loss of a million dollar in revenue due to the fact that Mr. deVries and Jones did not preserve the "non-compete" with Mr. Johnson, which it is my understanding that Mr. deVries and Jones were hired for to represent Mr. Day in this matter.

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Mr. Benson did not confer with me prior to my testimony regarding the parameters of my economic report other than I was to calculate damages for the nine clients in the SWBYP case. He did not request that I do an evaluation of the destruction of the entire business. Consequently the only damages that I had evaluated were the nine clients in the SWBYP case. Therefore, I was not prepared to be an effective advocate as an economic expert regarding the losses to Day Advertising in my testimony at trial.

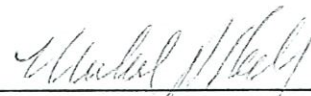
### VALUATION OF DAMAGES

In order to value Day Advertising due to the destruction of the business, I utilized the capitalization process. Capitalization is a process applied to an amount representing some measure of economic income for a single period in order to convert that economic income amount into an estimate of present value. Dividing the growth-adjusted capitalization rate into the period's project measure of economic income provides the valuation of the future stream of cash flows. I utilized the build-up method of capitalization, a generally accepted economic methodology for value a business, for my economic calculations.

I provided three estimates of the value of Day Advertising as of December 31, 2008. I have brought values to present value. Because the capitalized value is calculated as of December 31, 1998, it is necessary to bring the capitalized value of Day Advertising to present value as of December 31, 2013. I used the monthly prime rate compounded annually as published by the St. Louis Federal Reserve Bank (<http://research.stlouisfed.org/fred2/series/MPRIME?cid=117>) to bring the calculated economic loss to December 31, 2013.

Estimate #1 was based upon a capitalization rate of 18.24 that provided a cumulative value of Day Advertising, including interest, of \$3,101,008 as of December 31, 2013. Estimate #2, was based upon a capitalization rate of 13.62% that provided a cumulative value of Day Advertising, including interest, of \$4,152,892 as of December 31, 2013. Estimate #3, based upon a capitalization rate of 11.33%, provided a cumulative value of Day Advertising, including interest, of \$4,992,268 as of December 31, 2013.

Based upon additional information I may receive in this matter that may materially affect by economic loss estimates, I reserve the right to amend my calculations of economic loss.

  
\_\_\_\_\_  
Michael P. Kelsay, PhD



**Academic and Professional  
VITA  
of  
Michael P. Kelsay, Ph.D.**

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(913) 940-0109

**Date of Birth:**

6/4/50

**Educational Background**

1989-1993	University of Tennessee, Ph.D., Economics
1986-1989	University of Missouri, MA, Economics
1969-1974	University of Missouri, BA, Economics

PhD Dissertation: *Siting Waste-to-Energy Facilities in the United States: A Social and Economic Perspective* (1993). University of Tennessee – Knoxville.

**Academic Positions**

1996-Present	Research Professor and Adjunct Faculty, Department of Economics, UMKC
2003-Present	Resident Research Associate, Center for Full Employment and Price Stability, Department of Economics, UMKC
1995-1996	Director of Undergraduate Program, IPFW, School of Public & Environmental Affairs
1993-1996	Assistant Professor, School of Public and Environmental Affairs, Indiana-Purdue University at Fort Wayne

1989-1993                      Research Assistant and Ph.D. Candidate, The University of Tennessee Energy, Environment and Resource Center and Department of Economics

### **Professional Positions**

1996-2013                      Economic Consultant, John O. Ward & Associates  
1983-1989                      Chief Executive Officer, Argentine Savings and Loan Association, Kansas City, KS  
1980-1983                      Controller, Argentine Savings and Loan Association, Kansas City, KS  
1977-1980                      Assistant Manager, Termplan Finance of Independence, a consumer finance subsidiary of First Pennsylvania Bank

### **Academic Associations**

National Association of Forensic Economists

### **Academic Honors**

Outstanding Teacher of the Year, IPFW, School of Public & Environmental Affairs, 1993-1994  
The University of Tennessee, Waste Management Research & Education Institute, Ph.D. Fellowship, 1992-1993  
Oak Ridge National Laboratory, U.S. Department of Energy Research Fellowship, 1992  
J. Fred Holly Excellence in Economics Fund Fellowship, 1991-1992, 1990-1991  
Fellowship, College of Business Capital Gifts Fund, 1989-1990

### **Grants Funded and Submitted**

The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri. Michael P. Kelsay, PhD. and James I. Strugeon, Co- Principal Investigator, December, 2011. \$62,205

The Economic Cost of Employee Misclassification in the Construction Sector in the State of Kentucky Michael P. Kelsay, PhD. and James I. Sturgeon, Co- Principal Investigator, August, 2011. \$5,000

The Economic Cost of Employee Misclassification in the State of Indiana. June, 2010. \$11,750

Urban League of Kansas City, Missouri, "Greater Kansas City Equality Index 2010, Michael P. Kelsay, Co-Principal Investigator, December, 2009.

Urban League of Kansas City, Missouri, "Greater Kansas City Equality Index 2008, Michael P. Kelsay, Co-Principal Investigator, \$55,000, Co-Principal Investigator. December, 2008.

Urban League of Kansas City, Missouri, "Greater Kansas City Equality Index 2007, Michael P. Kelsay, Co-Principal Investigator, \$20,000, Co-Principal Investigator. December, 2007.

Urban League of Kansas City, Missouri, "Greater Kansas City Equality Index 2006, Michael P. Kelsay, Co-Principal Investigator, \$7,000, Co-Principal Investigator. October, 2006.

National Alliance for Fair Contracting, "The Economic Costs of Employee Misclassification in the State of Illinois, Michael P. Kelsay, Co-Principal Investigator, \$13,000, May, 2006.

Council for Promoting American Business, "The Economic Impact of Repeal of the Prevailing Wage Law in Missouri," Michael P. Kelsay, Co-Investigator, \$88,000, January, 2004.

Missouri Department of Natural Resources, "An Industrial and Commercial Waste Characterization and Analysis of Life-Cycle Production Costs and Disposal Options in Missouri," Michael P. Kelsay, Principal Investigator, \$54,560, 2000.

Missouri Department of Natural Resources, "Scrap Tire Management in Missouri: An Integrated Approach," Michael P. Kelsay, Principal Investigator, \$47,456, 1999.

Allen County Solid Waste District, "A Waste Characterization Analysis of Industrial Solid Waste in Allen County, IN: 1994," Michael P. Kelsay, Principal Investigator, \$12,124, 1995

### **Scholarly Publications**

(Articles, Book Chapters, Books & Monographs)



L. Randall Wray, Matthew B. Forstater, Michael P. Kelsay and Kelly D. Pinkham, "The Adverse Impact from Repeal of the Prevailing Wage Law in the State of Missouri," *Ingram's Magazine*, Corporate Kansas City, 2004.

Michael P. Kelsay and Robert A. Bohm, "State Environmental Taxes," The Encyclopedia of Taxation and Tax Policy, Joseph J. Cordes, editor, Urban Institute Press, 2005 Update.

Michael P. Kelsay and Robert A. Bohm, "State Environmental Taxes," The Encyclopedia of Taxation and Tax Policy, Joseph J. Cordes, editor, Urban Institute Press, 2000.

Michael P. Kelsay, Douglas Bowles, and Peter J. Eaton, "Missouri Outlook -1998, A Short-Term Forecast of Employment and Earnings in Missouri Regions, Cities, and Labor Market Areas," MSCDC, University of Missouri-Kansas, Center for Economic Information, July, 1998.

Michael P. Kelsay, "Regional and National Exports Trends In Missouri," MSCDC Economic Analysis Series, University of Missouri-Kansas City, Center for Economic Information, June 1998.

Michael P. Kelsay, "Business Location Trends in the State of Missouri," Missouri Census Update, Vol. 1, No., 3, Summer, 1997.

Michael P. Kelsay, "Business Location Trends in the State of Missouri," MSCDC Economic Analysis Series, University of Missouri-Kansas City, Center for Economic Information, July, 1997.

Michael P. Kelsay, "Environmental Trends in the State of Missouri," MSCDC Economic Analysis Series, University of Missouri-Kansas City, Center for Economic Information, June, 1996.

Michael P. Kelsay, A Survey of Regulation of Smoking in the Workplace and Other Public Places in Allen County, IN. prepared for Project Assist and American Cancer Society, 1996.

Michael P. Kelsay, Economic Impact Analysis of the Adams Center Facility, of Chemical Waste Management of Indiana, Inc., 1996.

Michael P. Kelsay, T. Randall Curlee, Susan M. Schexnayder, David P. Vogt, Amy K. Wolfe, and David L. Feldman, Waste-to-Energy in the United States: A Social and Economic Assessment, Quorum Books, 1995.



Michael P. Kelsay, A Waste Characterization Analysis of Industrial Solid Waste in Allen County, IN: 1994, prepared for Allen County Solid Waste District, September, 1995.

Michael P. Kelsay, T. Randall Curlee, Susan M. Schexnayder, David P. Vogt, Amy K. Wolfe, and David L. Feldman, Factors Contributing to Recent Decisions to Abandon Waste-to-Energy Projects: An Assessment, Final Report, National Renewable Energy Laboratory, Golden CO, 1993.

Michael P. Kelsay and William F. Fox, "Neutral Taxation of Financial Institutions During the 1990s," State Taxation of Business: Issues and Policy Options, Thomas F. Pogue, editor, Praeger Press, 1992: 187-206.

Michael P. Kelsay and Robert A. Bohm, "State Initiatives in the Financing of Solid Waste Infrastructure and Programs," State Taxation of Business; Issues and Policy Options, Thomas F. Pogue, editor, Praeger Press. 1992: 291-309.

Michael P. Kelsay and Robert A. Bohm, Taxing to Fund Environmental Programs, University of Tennessee Waste Management Research and Education Institute, January, 1992.

Michael P. Kelsay and Robert A. Bohm, "State Initiatives in the Financing of Solid Waste Infrastructure and Finance," National Tax Association, Proceedings of the Eighty-Third Annual Conference on Taxation, 1992: 110-115.

Michael P. Kelsay, Robert A. Bohm, and Geneil A. Hailey, "Model Landfill Calculations for Alternative Facility Size," Appendix D: Guidelines for Decision Makers: Solid Waste Management, the University of Tennessee, County Technical Assistance Service, November, 1991.

Dunsmore, Mary, with appendices by Michael P. Kelsay, Robert A. Bohm, and Geneil A. Hailey, Solid Waste Landfills in Tennessee's Municipal Solid Waste Disposal System, The University of Tennessee, SW-10-91, September, 1991.

Waste Management Research and Education Institute, Residuals Management: A Study to Examine Total Demand for Landfilling Hazardous Waste in EPA Region IV, Interim Report, June, 1991.

Michael P. Kelsay and Robert A. Bohm, Accounting for the Full Costs of Environmental Infrastructure and Alternative Methods of Finance: The Case of Solid Waste Services,

University of Tennessee Waste Management Research and Education Institute, SW-9-91, March, 1991.

Jack Barkenbus, Robert A. Bohm, Michael P. Kelsay, et al., Managing Our Waste: Solid Waste Planning for Tennessee, Final Report, State of Tennessee, February, 1991.

## Reports

Economic Analysis of Initiative 1082 in State of Washington. Prepared for Washington State Association for Justice. October, 2010.

An Analysis of "An Economic Examination of West Virginia Prevailing Wage-Law," by Andrea Dean. Prepared for the West Virginia Building and Trades, January, 2009.

## Professional Presentations

"State of Black Kansas City: 2008 Equality Index." Greater Kansas City Board of Director's Luncheon. June 18, 2009.

"Looking the Other Way: Benefiting from Misery," Panelist. Denver, Colorado, March 12<sup>th</sup>, 2009.

"Worker Misclassification Crisis," International Union of Bricklayers and Allied Craft workers, 2007 Conference Program, August 6, 2007.

"The Adverse Impact of Repealing the Prevailing Wage in Missouri," Missouri Association of Counties, November 20, 2006.

"Minimum Wage Forum," Panelist, University of Missouri-Kansas City, November 2, 2006.

"Prevailing Wage Requirements and Their Impact on Missouri School," 2006 MSBA Annual Conference," Tan-Tar-A Resort, Osage Beach, Missouri October 28, 2006.

"The Adverse Economic Impact From Repeal of the Prevailing Wage Law in Missouri," Missouri Municipal League, 72<sup>nd</sup> Annual Conference, St. Louis, Missouri, October 2, 2006.

"Symposium on the Prevailing Wage Agenda," United Community Services, Reading, Pennsylvania, June 15-16, 2006.



"Partnering to Preserve the Prevailing Wage," Sheet Metal Industry Week 2004, Las Vegas, Nevada, May 3, 2004.

"The Adverse Economic Impact of Repeal of the Prevailing Wage Law in Missouri," St. Louis General Contractors Association, February 20, 2004.

"The Adverse Economic Impact of Repeal of the Prevailing Wage Law in Missouri," Kansas City, Missouri Building and Trades Council, January 19, 2004.

"The Adverse Economic Impact of Repeal of the Prevailing Wage Law in Missouri," St. Louis Building and Trades Council, January 14, 2004.

"Commercial Litigation: Lost Profits and Lost Value of Business," Litigating *Damages*, University of Missouri-Kansas School of Law/Continuing Education, November 14, 1997, Kansas City, Missouri.

"State Environmental Taxes," American Economic Association, San Francisco, CA, January, 1996.

"Siting Solid Waste Incinerators as a Public Expenditure Decision," American Economic Association, Boston, MA, January, 1994.

"Taxing to Fund Environmental Programs," American Economic Association, New Orleans, LA, January, 1992.

"Structuring Taxes to Encourage Production of Financial Services, National Tax Association, San Antonio, TX, March, 1991

"Accounting for the Full Costs of Environmental Infrastructure and Methods of Finance: The Case of Solid Waste Services," American Economic Association. San Francisco, CA, 1990.

## **Editorial Reviews**

Reviewer: *Journal of Forensic Economics*  
*Prentice Hall Publishing*

## **Consultant**



1996-present	John O. Ward & Associates, Inc., Prairie Village, KS.
1995-1996	Chemical Waste Management of Indiana, Inc., Fort Wayne, IN
1995-1996	Plews, Shadley, Racher and Braun, Indianapolis, IN.
1994	Clark & Associates, Fort Wayne, IN.

## **Courses Taught**

Graduate and undergraduate: Financial Analysis & Decision-Making, Financial Management & Budgeting, Public Finance and Budgeting, International Finance, Statistical Techniques, Statistical Analysis for Public Affairs, Data Analysis and Modeling for Public Affairs, Economic Statistics, Introductory & Intermediate Microeconomics, Introductory & Intermediate Macroeconomics, Benefit-Cost Analysis, Environmental Economics, Introduction to Econometrics, Mathematical Economics, and Managerial Economics

## **University Service**

Advisory Board, Center for Environmental Studies, UMKC, 1997-Present  
 Chairman, Standards Review Committee, IPFW, 1993-1996  
 Environmental Sciences and Policy Analysis Group, 1993-1996  
 Public Finance and Policy Analysis Group, 1993-1996  
 Computer Users Advisory Group, IPFW, 1993-1995  
 University Admissions Subcommittee, IPFW, 1993-1995

## **Professional and Community Service**

Member, Board of Directors, Argentine Savings & Loan Association, Kansas City, KS, 1986-1989  
 Corporate Secretary, Argentine Savings & Loan Association, Kansas City, KS, 1983-1989  
 Member, Cash Management Committee, City of Kansas City, KS, 1986-1989  
 Member, Board of Directors, Council of Mutual Savings Associations, 1985-1989  
 Member, Board of Directors, Crosslines Retirement Center, Kansas City, KS, 1984-1989 (Assistant Treasurer, 1987-1988)  
 Member, Advisory Board of Directors, Salvation Army, Kansas City, KS, 1983-1989 (Chairman of Christmas Campaign, 1987-1988)  
 Member, Board of Directors, Kansas City Chapter of The Institute of Financial Education, 1982-1989 (Chapter President (1988-1989))